BRIEF TO CROSS EXCEPTIONS TO THE

JUDGE

DECISION OF THE ADMINISTRATIVE LAW

 $\lceil MBM
vert$ Jeffer Mangels Butler & Mitchell $u^{
m p}$

PRINTED ON

LA 9441022v1

RECYCLED PAPER

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

I. **PROCEDURAL HISTORY**

This case was brought by Region 31 of the National Labor Relations Board (the "Region") against Respondent based on charges filed by SEIU and CNA which were pursued by the Region through its Third Amended Consolidated Complaint ("Complaint").

The matter was heard before Administrative Law Judge William G. Kocol (the "ALJ") on September 28, October 17 and October 18, 2012. Numerous charges included within the Complaint were settled between the parties prior to going on the record on September 28, 2012.

On January 16, 2013, the ALJ issued his Decision (the "Decision") and on March 7, 2013, Respondent filed 39 Exceptions to the ALJ's decision. On March 14, 2013, SEIU filed 2 Cross-Exceptions and on April 12, 2013, CNA filed 7 Cross-Exceptions.¹

II. **CHARGING PARTIES' CROSS-EXCEPTIONS**

Jointly SEIU and CNA take 7 Cross-Exceptions to the ALJ's Decision. These Cross-Exceptions can be grouped into two different categories: (1) conclusions regarding Respondent's payment for duties specifically directed by management and (2) requests for modification of the Remedy and Notice.

A. Conclusions Regarding Respondent's Payment for Duties Specifically Directed by Management

CNA's Cross-Exceptions 1-4 except to the ALJ's conclusions of fact and law based on the uncontested and credible testimony of Margret Morgan, the Hospital's Director of Human Resources. CNA clearly does not contest the credibility of Ms. Morgan's testimony as its argument relies solely on the testimony of Ms. Morgan. Instead, CNA's Cross-Exceptions 1-4 are based on its attempt to conflate the terms "duties as specifically directed by management" and "hospital related business." It is established in the record that "hospital related business" is a broader term which is inclusive but not limited to "duties as specifically directed by management." (Decision, Page 10, Lines 26-26). CNA cites to Ms. Morgan's testimony related to the broader term of "hospital related

¹ SEIU's Cross Exceptions 1 and 2 are identical to CNA's Cross Exceptions 5 and 6 respectively.

⁻²⁻MARINA DEL REY HOSPITAL'S ANSWERING BRIEF TO CROSS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

business." CNA's argument rests on an inappropriate attempt to interchange the two terms. Additionally, Ms. Morgan clearly testified that if management specifically assigns an employee to perform a duty, the employee will be paid for it. (Transcript, Page 605, Lines 3-7).

Further, the ALJ's conclusion that the Employer would be required to pay the employees for time spent performing those duties specifically directed by management is simply a statement of the Employer's obligations under the law. The conclusion is also supported by Ms. Morgan's uncontested testimony on the topic. The record is void of evidence directly to the contrary, and as such, the ALJ's statement is proper and well founded.

The ALJ's findings on these points are well founded in the record evidence and in the law and the Board should find no merit to CNA's Cross-Exceptions 1-4.

В. **Modification of Remedy and Notice**

SEIU's and CNA's Cross-Exceptions to the ALJ's remedy and order should be rejected as unsupported in Board law.

SEIU's Cross-Exception 1 and CNA's Cross-Exception 5 seek to improperly extend the time for posting the Board's notice. Their argument that limiting the posting to 60 days encourages delay is without record, legal, empirical or analytical support and should be rejected. No extension of time for notice posting is merited.

SEIU's Cross-Exception 2 and CNA's Cross-Exception 6 seek to modify the content of the notice by deleting "choose not to engage in any of these protective activities." Such a modification should be rejected as creating a coercive notice. Employees have a right to refrain from engaging in protected activity. An official notice from the Board, notifying employees of their rights, should contain a wholly accurate representation of these rights, and not the piecemeal statement advocated by SEIU and CNA. Charging parties cite no authority in support of their attempt seek the Board's endorsement of such a lopsided and biased notice. SEIU's Cross-Exception 2 and CNA's Cross-Exception 6 should be rejected.

Lastly, CNA's Cross-Exception 7 seeks to modify the Board's notice to include mention of CNA and is a similarly meritless attempt to improperly skew the Board's notice away from neutral

27

1

2

3

4

5

6

7

8

and in support of CNA. CNA's bare statement that employees will be misled regarding their rights under the act is without support in the record or law. The notice clearly speaks to union activity generally, and CNA's proposed additional language is intended to imply that only union activity on behalf of a labor organization is protected. This is simply not the case as employees' rights under the Act extend beyond those activities engaged in on behalf of a labor organization and include a choice to not to engage in activity on behalf of a labor organization. As such, CNA's Cross-Exception 7 should be rejected.

III. **CONCLUSION**

Based on the foregoing, Respondent respectfully requests that SEIU's and CNA's Cross-Exceptions be denied in their entirety.

Dated: May 10, 2013

JEFFER, MANGELS, BUTLER & MITCHELL LLP MARTA M. FERNANDEZ PATRICIA M. DESANTIS

PATRICIA DESANTIS

Attorneys for Respondent

MARINA DEL REY HOSPITAL

28 PRINTED ON RECYCLED PAPER

LA 9441022v1

25

26

27

m JMBM Jeffer Mangels Butler & Mitchell $_{ m LP}$

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

		<u>CER</u>	<u> FIFIC</u>	ATE	OF S	SERY	<u>VICE</u>

I hereby certify that I served the attached MARINA DEL REY HOSPITAL'S ANSWERING BRIEF TO CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE on the parties listed below on the 10th day of May, 2013:

SERVED VIA E-FILING

Office of Executive Secretary
National Labor Relations Board
www.nlrb.gov

SERVED VIA EMAIL:

Rudy Fong-Sandoval, Esq.
Counsel for the Acting General Counsel
Rudy.Fong-Sandoval@nlrb.gov

Nicole Buffalano, Esq. Counsel for the Acting General Counsel Nicole.Buffalano@nlrb.gov

Monica Guizar, Esq. Weinberg, Roger & Rosenfeld MGuizar@unioncounsel.net

Brendan White, Esq. California Nurses Association BWhite@CalNurses.Org

Patricia M. DeSantis

JEFFER MANGLES BUTLER & MITCHELL, LLP

Attorney for Respondent

MARINA DEL REY HOSPITAL

28
PRINTED ON
RECYCLED PAPER

LA 9441022v1

- 5 - MARINA DEL REY HOSPITAL'S ANSWERING BRIEF TO CROSS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE